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March 18, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Revision of Part 22 and Part 90 of the Commission's
rules to Facilitate Future Development of Paging
Systems
WT Docket No. 96-18

Implementation of Section 309(j) of the
Communications Act -- Competitive Bidding
PP Docket No. 93-253


Dear Mr. Caton:

Transmitted herewith on behalf of Priority Communications, Inc. ("Priority") are the paper original, three microfiche, and four paper copies of its "Comments on Notice of Proposed Rulemaking" in the above-referenced proceeding.

This material is respectfully directed to the attention of the Commission.

Please direct any questions or correspondence with respect to this matter to our office.

Very truly yours,



Ellen S. Mandell
Attorney for Priority
Communications, Inc.

Enclosure

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In the Matter of)
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Revision of Part 22 and)
Part 90 of the Commission's)
Rules to Facilitate Future)
Development of Paging Systems)
)
Implementation of Section)
309(j) of the Communications)
Act -- Competitive Bidding)

WT Docket No. 96-18

PP Docket No. 93-253

To: The Commission

COMMENTS ON NOTICE OF PROPOSED RULEMAKING

Priority Communications, Inc. ("Priority"), by its attorney and pursuant to Section 1.415(a) of the Commission's Rules, hereby submits its comments in the above-captioned proceeding to amend the paging rules^{1/}. In support hereof, Priority respectfully states as follows:

Statement of Interest:

Priority is the licensee of a wide-area paging system in the 931 MHz band in the state of Florida. The instant proceeding proposes sweeping revisions to the rules governing the licensing of paging facilities. Accordingly, Priority is an "interested" person for purposes of participating in this proceeding.

Background:

By its Notice of Proposed Rulemaking ("NPRM"), FCC 96-52, released February 9, 1996, the Commission has proposed, inter alia, to replace current site-by-site licensing procedures for

^{1/}The Commission bifurcated the instant docket. In accordance with the established procedures, Priority has already submitted comments on the Commission's proposal for interim licensing during the pendency of this docket.

paging systems with a market-wide licensing scheme, and to adopt competitive bidding procedures to resolve mutual exclusivity between applications. In addition, in the 931 MHz band, the Commission proposes to redefine the service and interference contours of existing paging stations, by replacing the currently used standard radii with mathematical formulae for site-specific contour calculations.

Priority respectfully submits that incumbent licensees in the 931 MHz band who presently provide substantial service to their markets should be entitled to automatically trade-in their site-specific authorizations for market-wide geographic licenses, to better serve subscribers. Competitive bidding is unnecessary for most of the 931 MHz band, as there is little, if any, remaining spectrum for use by new entrants. On the other hand, it would disserve the public interest to auction remaining pockets of spectrum to new entrants and lock incumbents who do not acquire auctioned licenses within their present contours. Furthermore, adoption of the mathematical formulae proposed by the Commission will unnecessarily complicate procedures for licensing paging systems, and therefore is inimical to the purposes of this proceeding.

Market-wide licenses should be issued automatically to 931 MHz incumbents who are substantially serving their geographic areas:

The Commission's observation that the 931 MHz band is heavily utilized in virtually all major markets and most mid-sized markets (NPRM, ¶¶13-14) is consistent with Priority's experience in Florida markets. Priority's experience also corroborates the

Commission's finding that wide-area, multi-site paging systems better serve the public than single-site systems having limited coverage (NPRM, ¶21).

On these bases, if the Commission converts to a market-based licensing scheme for paging facilities, 931 MHz incumbents who presently provide substantial service to their markets should be allowed to automatically trade-in their site-specific licenses for geographic-area licenses. In this manner, incumbent licensees will have the flexibility to promptly and appropriately respond to subscriber needs with additions and modifications to their existing wide-area systems.

Issuance of market-wide licenses to incumbents providing substantial service will ensure future continuity of service throughout the entire market. Existing systems can be expected to expand outward naturally in response to such customer needs as relocations, additional locations, etc. In contradistinction, to auction remaining spectrum pockets to new entrants for small stand-alone systems will irrationally preclude future service expansions required by current paging subscribers. Where more than one licensed system operates on a given frequency in a market, the various carriers will be constrained to accord one another co-channel interference protection. As a result, such markets may be permanently bisected by intervening belts of co-channel interference. These interference areas will have no access to usable service on the effected frequencies.

Market-wide licensing of incumbents already providing substantial service will significantly streamline administrative processing burdens during the transition period, by affording universal certainty as to the borders of paging systems. In contradistinction, if incumbents are issued wide-area licenses covering only their present site-by-site contours, complex procedures will be required to map those contours and litigate interference disputes in intervening areas.

Auctions are inappropriate for 931 MHz frequencies on which incumbents are providing substantial service:

The Commission's tentative findings reveal that auctions are unnecessary where 931 MHz incumbents already provide substantial service in their markets. The Commission has acknowledged that 931 MHz channels "are scarce in virtually all major markets and most mid-sized markets." (NPRM, ¶13). Indeed, to attempt to wedge new entrants into presently left-over areas would actually disserve the public interest. As noted above, intervening zones of co-channel interference would be deprived of usable service on the effected frequencies. Furthermore, the marketplace has recognized the inefficiency of stand-alone paging systems with tiny coverage areas (NPRM, ¶21). These remaining areas can be operated most efficiently as expansions of existing systems.

Auctions of 931 MHz spectrum in markets substantially served by incumbents would be subject to anti-competitive abuses:

Although left-over areas of 931 MHz spectrum in markets already substantially served by incumbents probably have no commercial value aside from co-channel expansion by incumbent

systems, to open those areas to competitive bidding would be subject to anti-competitive mischief. In-market competitors on other frequencies might attempt to artificially bid-up the price of the remaining spectrum in order to weaken the competitive position of the incumbent by sapping its financial resources. Indeed, as a mere cost of doing business, a deep-pocketed competitor might bid high to acquire the spectrum, to entirely block the incumbent from geographic expansion required for competitive viability. Even if a mandatory implementation schedule is adopted, an unscrupulous competitor could acquire the spectrum at auction to block an incumbent from needed expansion for years until the authorization expires for failure to construct.

It would be naive to believe that "geographic licensees and incumbents could enter into voluntary negotiations with respect to the purchase or relocation of the incumbents' facilities" or that "incumbents would be free to negotiate voluntary arrangements with geographic licensees to allow incumbent expansion within a geographic area" (NPRM, ¶39) in a manner which would serve the public interest. Speculators and greenmailers having no interest in providing paging service on spectrum acquired at auction will have free reign to demand a king's ransom for spectrum each time the incumbent must expand geographically in response to a subscriber's needs.

Auction eligibility should be limited to incumbents:

In the alternative, if competitive bidding procedures are adopted, Priority respectfully submits that eligibility to bid on

931 MHz spectrum should be limited to market incumbents already providing service on the particular frequency. By so limiting eligibility to bid, the Commission will ensure that the high bidder is a serious applicant intending to provide paging service to the public, and that the spectrum will be put to use as part of a wide-area system attractive to subscribers.

Consistent with long-standing policy to encourage voluntary settlement of disputes between applicants in the mobile services, the Commission likewise should encourage incumbents to pursue settlements, formation of joint ventures, partitioning agreements, and other mechanisms for amicable resolution, where multiple incumbents apply to participate in an auction for a particular license.

Incumbent systems should not be frozen within current contours:

The Commission has expressed an intention to reserve to incumbents "the flexibility to modify or augment their systems" (NPRM, ¶39). In order to properly serve the public, paging carriers must be able to expand or modify their systems in response to constantly changing needs of customers, and to respond to such circumstances beyond their control as unanticipated coverage shortfalls and involuntary site losses.

The Commission has proposed to lock incumbents who are not geographic licensees within "the aggregate of the service contours around each of the incumbent's contiguous sites operating on the same channel," and to preclude incumbents from expanding beyond their present interfering contours without the consent of

the geographic licensee (NPRM, ¶37). Priority respectfully submits that such an approach would be detrimental to the public interest. If carriers are unable to respond to customer needs and other circumstances beyond their control due to a permanently frozen footprint, it can be expected that existing service to the public ultimately will be degraded.

Mathematical formulae to recalculate existing service and interference contours is contrary to the public interest:

Presently, the Commission sets forth standardized predicted service radii and interference radii of 931 MHz systems in Tables E-1 and E-2 of Section 22.537(f) of the rules. The Commission's proposal to replace these tables with mathematical formulae to recalculate presently licensed service and interference contours on a site-by-site basis (NPRM, ¶¶51-52) will not serve the purposes of the instant proceeding.

The Commission has stated that the dual purposes of this proceeding are to "simplify and streamline licensing procedures" and to "provide a flexible operating environment for all paging services" (NPRM, ¶1). Adoption of the proposed formulae will have the opposite result, by adding complexity to the licensing process, and by shrinking the currently protected operating parameters of systems which presently serve the public well^{2/}.

^{2/}In this regard, Priority notes the absolute constraint of Section 309(7)(A) of the Communications Act, which states:

(A) CONSIDERATION PROHIBITED -- In making a decision pursuant to section 303(c) to assign a band of frequencies to a use for which licenses or permits will be issued pursuant to paragraph (4)(C) of this subsec-

Alternatively, if the formulae are adopted, they should be imposed only prospectively, and the Table E-2 interference contours of existing facilities should be grandfathered, to ensure that there is no loss of existing service to the public.

Conclusion:

The Commission has recognized that paging is a mature, thriving industry (See e.g. NPRM, ¶¶ 6-7; Separate Statement of Commissioner Susan Ness; Separate Statement of Commissioner Rachelle B. Chong). Incumbent paging carriers serve the needs of the public by providing urgent communications at reasonable rates in a spectrally-efficient wide-area manner. While rule changes that would afford paging providers opportunities to improve service offerings are welcome, it is vitally important to the public interest, convenience and necessity that the Commission take no action which would hinder the ability of incumbent licensees to continue providing reliable, responsive service.

tion, the Commission may not base a finding of public interest, convenience, and necessity on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.

WHEREFORE, the premises considered, Priority Communications, Inc., respectfully submits that the Commission should adopt rules in accordance with the foregoing.

Respectfully submitted,

PRIORITY COMMUNICATIONS, INC.

By 
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Its Attorney

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